

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON AND MAINE
CORPORATION,

Plaintiff,

-v.-

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Defendant.

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Civil Action No. 05-11656-RCL

**DECLARATION OF JAMES HENNEMANN IN SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

James Hennemann declares as follows:

1. I am the Director of Automotive of Springfield Terminal Railway Company, a division of Boston & Maine Corporation ("B&M"), the Plaintiff in this action, and I worked at the Boston Engine Terminal ("BET") as a B&M employee from approximately 1979 to 1986. As such I am familiar with the facts and circumstances of this case. My knowledge comes from my own personal knowledge, from corporate records, and from documents cited herein.
2. I make this declaration in support of the Plaintiff's Motion for Partial Summary Judgment to enforce the Consummation Order issued in B&M's bankruptcy proceedings and to enjoin MBTA's assertion of a claim for environmental cleanup costs at the BET for releases prior to

June 30, 1983. I also make this motion in support of a declaratory judgment by this Court that MBTA's claim is contractually limited by a prior contractual arrangement between MBTA and the Trustees of B&M's bankruptcy estate.

3. A declaration as to the admissibility and authenticity of the documents produced in this action by B&M, with Bates labels bearing the prefix "BM," and a declaration as to the admissibility and authenticity of the documents produced in this action by MBTA, Bates labeled with prefix "MBTA," appears in the Declaration of Robert B. Culliford in Support of Plaintiff's Motion for Partial Summary Judgment ¶ 3.

4. Daily activities at the BET included fueling, maintenance and washing of large quantities of rail cars.

5. Frequent spills of fuel oil occurred at the BET prior to June 1983.

6. Prior to June 1983, MBTA employees were aware that releases of fuel oil occurred at the BET (relevant documents attached hereto as Exhibits 1-8).

7. While I was employed at the BET, the ground there became saturated with fuel oil, and the odor of diesel fuel was always present at the site (relevant documents attached hereto as Exhibits 9-11).

8. While I worked at the BET, areas at the site where fuel oil spillage was constant and excessive included the fueling stands, at the filling points for the storage tanks, the service areas of the shop, the ready tracks where locomotives and self-propelled cars were stored awaiting dispatch, and the fuel storage tanks (including a leaking one million gallon fuel oil storage tank and a 100,000 gallon fuel oil storage tank) (relevant documents attached hereto as Exhibits 12-13).

9. MBTA employee Richard House, who worked at the BET, specifically recalled that the bottom of the one million gallon fuel storage tank had to be replaced in approximately 1981. (relevant documents attached hereto as Exhibits 14-15).
10. By the late 1970's and early 1980's, any contact with the oily, black ground at the BET resulted in soiling and staining of clothes and footwear (relevant documents attached hereto as Exhibits 16-18).
11. MBTA employees Richard House and Peter Wilson were well aware of the oil-saturated ground at the site prior to June 1983 (relevant documents attached as Exhibits 19-21).
12. Mr. House conceded that "[t]here was areas that were pretty saturated with oil, fuel oil" (relevant documents attached as Exhibit 22).
13. Mr. House admitted that he had observed pooled oil on the ground at the BET during the 1979 to 1983 time period (relevant documents attached as Exhibit 23).
14. Mr. Wilson similarly admitted having observed oil-saturated puddles on the ground in fueling areas at the BET from 1979 to 1983 (relevant documents attached as Exhibit 24).
15. Several large releases of fuel oil or hazardous materials occurred during the late 1970's and early 1980's, when MBTA owned the BET (relevant document attached hereto as Exhibits 25-28).
16. Documents indicate that on December 14, 1980, approximately 14,000 gallons of No. 2 fuel oil spilled at the BET and made its way to the Yard 14 oil pit, where it was pumped by contractors. The spill was reported to the National Spill Response telephone number (relevant documents attached as Exhibit 27).
17. Documents also indicate that as of July 19, 1979, Pit 42 at the BET (measuring 64 feet long by 5 feet wide) was filled up to track level with oil and water. The pit was constantly filling

up with oil and had to be pumped out about every week and a half to two weeks (relevant documents attached as Exhibit 25).

18. MBTA had knowledge of the environmental condition of the BET site, releases of oil and hazardous substances at the site, and the involvement of regulators at the site (relevant documents attached as Exhibits 1-12, 16-17, 19-24, 29-39).

19. MBTA maintained an office at the BET and had personnel on site who exchanged information on environmental conditions at the BET with their MBTA supervisors (relevant documents attached as Exhibits 1-3, 5-7, 31-34, 36).

20. In his deposition, MBTA employee Richard House recalled usual discussions with his MBTA supervisor, Mr. Walter Mark, regarding whether there had been an oil spill "how much it was, how bad it was, and what we were doing to clean it up" (relevant documents attached as Exhibit 1).

21. Mr. House testified that between 1979 and 1983, fuel spills occurred during fueling operations at the BET when the fuel nozzle would not be turned off and would overflow (relevant documents attached as Exhibit 40).

22. Mr. House recalled an instance, also during this time period, in which a hose broke in the Budd House at the BET and there was fuel oil three to four inches deep (relevant documents attached as Exhibit 38).

23. Mr. House testified that the Budd cars at the BET were an oily mess and spills and drips ran onto the ground during the 1979 to 1983 time period (relevant documents attached as Exhibit 39).

24. MBTA employee Peter Wilson admitted that he observed fuel in the ground after a fuel spill in the area of the BET in the early 1980's. Mr. Wilson testified that he did not report the

spill to officials at MBTA because it had already been reported to them (relevant documents attached as Exhibit 4).

25. Mr. Wilson also testified that his information regarding spills at the BET prior to June 1983 generally came from his supervisors at MBTA (relevant documents attached as Exhibits 2-3).

26. Mr. Wilson further testified that he received information from other MBTA employees concerning a spill of lubricating oil at the BET during the 1979 to mid-1983 time period (relevant documents attached as Exhibit 6).

27. Mr. Wilson testified that sometime between 1979 and 1983, William MacDonald of MBTA told Mr. Wilson that there was an oil spill at the site and asked Mr. Wilson to check the booms on the Miller's River. Mr. Wilson saw an oil sheen and reported it to Mr. MacDonald (relevant documents attached as Exhibit 7).

28. Mr. Wilson also testified that MBTA had oversight of expenses at the BET site prior to June 1983, which included environmental expenses such as spills (relevant documents attached as Exhibit 35).

29. During the early 1980's MBTA personnel attended meetings regarding environmental issues at the BET and recognized the need for cleanup at the site (relevant documents attached as Exhibits 30, 41-45).

30. In the 1980 to 1982 period, MBTA employees Walter Mark and Richard House attended meetings regarding environmental issues at the BET, including the leak in the one million gallon tank (relevant documents attached as Exhibit 41).

31. Discussion at these meetings included concern about stopping any leak to prevent any more complaints from the Coast Guard and to make sure they were not polluting the property (relevant documents attached as Exhibit 42).
32. George Covino of B&M and Walter Mark of MBTA were also involved in meetings at the BET to develop a more efficient fueling system for the BET. These discussions began in approximately 1982 (relevant documents attached as Exhibits 41, 44).
33. The old fueling system at the BET caused a problem because it did not have automatic shutoff and fuel was going onto the ground right outside the main offices (relevant documents attached as Exhibit 42).
34. In or about 1984, MBTA installed new fueling nozzles at the BET with automatic shut-off to address the fuel spillage problem (relevant documents attached as Exhibits 30, 45).
35. Peter Wilson testified that in the 1982 to 1983 time period, a discussion took place at the MBTA's general office in which Dan Breen of the MBTA engineering staff indicated to Mr. Wilson that there might have to be a cleanup of hazardous substances at the BET site (relevant documents attached as Exhibit 46).
36. Mr. Wilson testified that in the 1982 to 1984 time period MBTA was aware of fill contaminated with fuel oil and lubricants that had to be analyzed so it could be handled properly (relevant documents attached as Exhibits 46-47).
37. Mr. Wilson also testified that during the period from 1979 to 1983, MBTA was aware of spills or releases of oil or hazardous substances at MBTA facilities other than the BET, including South Station and South Hampton Street, which required cleanup efforts by MBTA (relevant documents attached as Exhibit 29).

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 31, 2006.


James Hennemann